

Rev. Rul. 58-341, 1958-2 C.B. 400, 1958 WL 10925 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

Published: 1958

SECTION 1015.-BASIS OF PROPERTY ACQUIRED BY GIFTS AND TRANSFERS IN TRUST,
[26 CFR 1.1015-3](#); Gift or transfer in trust before January 1, 1921

(Also Sections 1014, 1053; 1.1014-1, 1.1053-1.)

The basis for determining an original Indian allottee's gain from the sale or exchange of his fee simple allotment, where the land had previously been held in trust for him by the United States under section 5 of the General Allotment Act of 1887, as amended, is its market value as of the date he had received his trust allotment if he had received it prior to January 1, 1921, but not less than the March 1, 1913, value if he had received his trust allotment prior to that date. If the original Indian allottee had received his trust allotment subsequent to December 31, 1920, his basis for determining gain after he has been issued fee simple patent is the March 1, 1913, value. If an Indian had inherited such a trust allotment and sells or exchanges the land after he has received fee simple patent, his basis for determining gain in fair market value as of the decedent's death, but if the decedent had died before March 1, 1913, it is not less than its fair market value as of that date. However, where Congress has provided otherwise in statutes dealing with particular tribes, the foregoing rules will not apply.

Advice has been requested regarding the determination of the basis for computing gain from the sale of allotted and restricted lands previously held by the United States in trust for Indians.

Under *Squire v. Horton Capoeman, et ux.*, 351 U.S. 1, Ct. D. 1796, C.B. 1956-1, 605, and [Revenue Ruling 56-342, C.B. 1956-2, 20](#), income held in trust for or received by the patent holder which is directly derived from allotted and restricted Indian lands while such lands are held by the United States, as trustee, in accordance with section 5 of the General Allotment Act of 1887, as amended, [25 U.S.C. 348](#), is exempt from Federal income tax. Consequently, any gain from the sale or exchange of the land while it is still held in trust is not subject to tax. See [Rev. Rul. 57-407, C.B. 1957-2, 45](#). The question has therefore arisen whether if, after the termination of the trust period, an Indian who has received fee simple patent sells or exchanges his allotment, he is entitled to take as his basis the value of the allotment at the time fee simple patent was issued, rather than the basis determined under the Internal Revenue Code.

It is the position of the Internal Revenue Service that, in the absence of a statute providing otherwise, an Indian's basis in his fee simple allotment must be determined in accordance with the provisions of the Code. *Grace W. Dick v. Commissioner*, [76 Fed.\(2d\) 265](#), certiorari denied [296 U.S. 588](#).

Under section 1015(c) of the Code, the basis of property acquired by transfers in trust before January 1, 1921, is its fair market value at the time of acquisition. Lands held under section 5 of the General Allotment Act have been transferred to the United States as trustee for the designated allottee. Therefore, if an Indian had received his trust allotment under the General Allotment Act before January 1, 1921, his basis is fair

market value at the date of the trust patent. See *Helvering v. Richard J. Reynolds*, 313 U.S. 428, Ct.D. 1516, C.B. 1941-1, 371, at 373, and [section 1.1015-3 of the Income Tax Regulations](#). If, however, that date was prior to March 1, 1913, then under section 1053 his basis for determining gain would be not less than the fair market value of the allotment as of March 1, 1913.

Section 1015(b) of the Code provides that the basis of property acquired by transfers in trust after December 31, 1920 (other than transfers in trust by gift, bequest, or devise), shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor. Before allotment, allotted lands would have been owned by the tribes, which would also have owned them prior to March 1, 1913. Under section 1053, where property has been acquired before March 1, 1913, its basis for determining gain may not be less than the March 1, 1913, value. It is the position of the Service that the basis of tribal lands to the tribe for purposes of determining gain (in the absence of proof of a higher 'cost' basis under section 1012) would be the March 1, 1913, value; and, accordingly, under section 1015(b), where an allotment is made from such lands after December 31, 1920, the basis for determining gain of the original allottee after fee simple patent has been issued would also be the March 1, 1913, value. See *Helvering v. Richard J. Reynolds*, *supra*, and [section 1.1015-2 of the Income Tax Regulations](#).

If an Indian had inherited a trust allotment under the General Allotment Act, his basis, under section 1014, would be its fair market value at the date of the decedent's death, but if inherited prior to March 1, 1913, the basis, for purposes of gain, would be not less than the March 1, 1913, value.

In some instances, statutes dealing with particular tribes provide that the basis to the Indian receiving fee simple patent shall be the value of the allotment when fee patent is received. See, for example, section 11 of Act of August 13, 1954, [25 U.S.C., sec. 564j](#) (in respect to Indians of the Klamath Tribe). Where such statutes apply, basis will be determined pursuant to their terms rather than under the foregoing rules.

Accordingly, it is held that the basis for determining an original Indian allottee's gain from the sale or exchange of his fee simple allotment where the land had previously been held in trust for him by the United States under section 5 of the General Allotment Act of 1887, as amended, is its market value as of the date he had received his trust allotment if he had received it prior to January 1, 1921, but not less than the March 1, 1913, value if he had received his trust allotment prior to that date. If the original Indian allottee had received his trust allotment subsequent to December 31, 1920, his basis for determining gain after he had been issued fee simple patent is the March 1, 1913, value. If an Indian had inherited such a trust allotment and sells or exchanges the land after he has received fee simple patent, his basis for determining gain is fair market value as of the decedent's death, but if the decedent had died before March 1, 1913, it is not less than its fair market value as of that date. However, where Congress has provided otherwise in statutes dealing with particular tribes, the foregoing rules will not apply.

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